



**DEVELOPMENT OF AMENDMENTS TO RULES AT 329 IAC 9 CONCERNING ADDITIONAL MEASURES
TO PROTECT GROUND WATER REGARDING UNDERGROUND STORAGE TANKS
#08-55 (SWMB)**

Overview

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to 329 IAC 9 concerning additional measures to protect groundwater by requiring new and existing tanks and piping to have secondary containment.

Citations Affected

329 IAC 9

Affected Persons

Owner and/or operators of underground storage tanks.

Reason(s) for the Rule

The Energy Policy Act of 2005, Public Law 109-58, effective August 8, 2005, contained under Subtitle B the Underground Storage Tank Compliance Act. Under Section 1530 of the Act, Congress requires additional measures to protect ground water by requiring one of the following:

1. Each new underground storage tank or piping connected to any such new tank, installed after February 8, 2007, or any existing underground storage tank, that is replaced after February 8, 2007, must be secondarily contained and monitored for leaks if the new or replaced underground storage tank or piping is within 1,000 feet of any existing community water system or any existing potable drinking water well; or

2. A person that manufactures an underground storage tank or piping for an underground storage tank system or that installs an underground storage tank system is required to maintain evidence of financial responsibility in order to provide for the costs of corrective actions directly related to releases caused by improper manufacture or installation unless the person can demonstrate themselves to be already covered as an owner or operator of an underground storage tank.

Discussions have occurred on the two options presented by the Energy Policy Act between the department and some interested parties. During the discussions, some of the petroleum fueling companies expressed support for the secondary containment option and stated that they are installing secondarily contained tank systems as a matter of company policy. The percentage of cost of secondary containment is small compared to the total cost of a new facility. While the replacement cost of a secondarily contained tank system at an existing facility may be higher, the preventative nature of having a secondarily contained

system will be less cost than conducting a remediation of a leak from a single-wall tank. Tank manufacturers and tank installers expressed concern with obtaining and holding the financial responsibility mechanism (insurance) for the federally required time. While there have been two other states that have chosen the option of financial responsibility, the successful implementation of that option is in question due to the unavailability of an insurance product that would cover the 10-year and 30-year time commitment. Some of the participants contended that the installers and tank manufacturers already carry general liability insurance and that under the current case law in Indiana such insurance policies would cover the required financial responsibility. Others in attendance were not as confident that there was any assurance the case law would continue to support that position in the future.

Economic Impact of the Rule

There would be a cost for secondary containment of tanks. Secondary containment for tanks is approximately \$8,000 to \$15,000 per tank and there are about 40 new tanks each year in Indiana, which would amount to \$320,000 to \$600,000, however, at least 50% of the tanks are voluntarily secondarily contained each year so the final cost is approximately \$160,000 to \$300,000, with the total for 7 years being \$1,120,000 to \$2,100,000.

The cost for under-dispenser spill containment is approximately \$350 per unit, and there are more than 50 and less than 100 new motor fuel dispenser systems installed per year in Indiana. This is approximately \$17,500 to \$35,000 per year with the total for the seven year period of the rule being \$122,500 - \$225,000.

Benefits of the Rule

The changes will provide additional protection to ground water in the state of Indiana and meet the requirement of the federal law.

Description of the Rulemaking Project

Indiana will move forward with the option of secondary containment in this rulemaking. After a great deal of deliberation the department is recommending that the board adopt a rule requiring secondary containment of tanks installed after the rule is effective. It is the department's position that the additional cost to purchase and install a tank

with secondary containment is far out-weighted by the cost of remediating a leak from a single walled tank. In addition, the thirty (30) year time commitment for tank and piping manufacturers and the ten (10) year time commitment for installers to maintain appropriate insurance can be expected to cause prominent manufacturers and installers to stop doing business in a state that mandates financial responsibility. If a particular tank or piping manufacturer decides to close their business, there is not an insurance product available to cover the remaining thirty (30) years or ten (10) years of liability, as applicable. The financial responsibility requirements on the manufacturer and installer will likely lead to increased litigation as to the fault or responsibility of a party. In addition, it would be expected that requiring financial responsibility from tank installers and tank manufacturers would result in increased single-walled tank and installation costs borne by the owner and operator that would be passed onto the product consumer. While some installers' and tank manufacturers' comprehensive general liability insurance may provide some measure of financial responsibility, the language in any individual policy is subject to change and is always subject to differing legal interpretations and therefore cannot meet current federal standards. In the long term, the financial responsibility option is a much less reliable option than secondary containment of tank systems and piping.

Scheduled Hearings

First Public Hearing: July 15, 2008, 1:30 p.m., Indiana Government Center South, Conference Center Room A.

Second Public Hearing: November 18, 2008, 1:30 p.m., Indiana Government Center South, Conference Center Room A.

Consideration of Factors Outlined in Indiana Code 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.

5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.

6) Economic reasonableness of measuring or reducing any particular type of pollution.

(7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:

(A) human, plant, animal, or aquatic life; or

(B) the reasonable enjoyment of life and property.

Consistency with Federal Requirements

This rule will be consistent with federal laws and rules.

Rulemaking Process

The first step in the rulemaking process is a first notice published in the *Indiana Register*. This includes a discussion of issues and opens a first comment period. The second notice is then published that contains the comments and the departments responses from the first comment period, a notice of first meeting/hearing, and the draft rule. The Solid Waste Management Board holds the first meeting/hearing and public comments are heard. The proposed rule is published in the *Indiana Register* after preliminary adoption along with a notice of second meeting/hearing. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule must be approved by the Attorney General and the Governor. When approved, the rule becomes effective 30 days after filing with Legislative Services.